MAURICE W. COBURN (ON RECONSIDERATION)

IBLA 82-995 Decided July 24, 1984

Petition for reconsideration of Maurice W. Coburn, 75 IBLA 293 (1983), W-77601.

Blanche Chomicki, 51 IBLA 128 (1980), overruled.

Prior decision sustained in its result; BLM decision reversed, and the case remanded.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

Where a simultaneously-filed oil and gas lease application is executed in a manner which incorporates numerous errors and violates several regulations, and thus creates ambiguities which cannot be resolved without the subsequent submission of further information, the application should be rejected. The fact that certain of these errors or violations have been held to be trivial or non-substantive when considered individually in other cases cannot serve to mitigate the cumulative effect of all of them appearing in a single application.

Appearances: Laura L. Payne, Esq., Denver, Colo., for appellant; Michael J. Tennant, Esq., Upland, Calif., for respondent.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Westates Group #5 (Westates) has petitioned for reconsideration of Maurice W. Coburn, 75 IBLA 293 (1983), which ordered cancellation of oil and gas lease W-77601, earlier issued to Westates by the Wyoming State Office, Bureau of Land Management (BLM). Coburn had appealed from a decision by the Wyoming State Office, BLM, rejecting his simultaneous oil and gas lease application for parcel WY 5153, drawn with second priority at the October 1981 drawing. BLM issued a lease for this parcel to Westates Group #5, the first-drawn applicant. Westates Group #5 is a partnership consisting of Robert J. Skubic and Thomas W. Wied. Coburn attacked the BLM decision on a number of grounds relating to alleged deficiencies in the application submitted by Westates Group #5. However, the Board made only two definitive holdings on these issues, and finding at least one of them dispositive of the appeal, declined to consider the remaining contentions by the appellant. 75 IBLA at 297.

In the opinion in Maurice W. Coburn, supra, this Board found that the oil and gas lease application made by Westates Group #5 was defective because the signature of the agent signing on behalf of the partnership was illegible and the record as a whole failed to reveal the relationship between the partnership and its agent. The opinion in Coburn, supra, held at page 296:

> Examination of the entire record on appeal fails to reveal the signature of the corporate agent's president anywhere in the record concerning the application of Westates Group #5, either in the qualifications file or in documents submitted with the questioned application itself. It is not sufficient, in this circumstance, to offer an explanation on appeal to show that the application was in fact properly executed by an officer of the corporate agent.

Following filing of the petition for reconsideration this Board permitted supplementation of the record, and received from BLM the complete qualifications file relating to the Westates application which had been maintained pursuant to 43 CFR 3102.2-6 (1981). The entire qualifications file was not before the Board at the time of initial decision. Examination of the supplemental material provided by BLM now reveals that the signature of Alan Young, identified as the president of Westates Resources, Inc., the corporate agent for Westates Group #5, was made part of the qualifications file on January 28, 1981. This signature corresponds to the previously unidentifiable signature on the Westates Group #5 application.

Since it now appears BLM records at the time of the October 1981 drawing did, in fact, contain sufficient documentation to enable a determination to be made that Alan Young was the unidentified signer of the Westates application, it is apparent the decision in Coburn, supra, is based upon a faulty factual premise. For this reason alone, reconsideration must be allowed.

Additionally, with reference to our other holding in that decision, since the issuance of Coburn the Board has become aware of the relevance to this decision of the opinion in Conway v. Watt, 717 F.2d 512 (10th Cir. 1983). More specifically, at 75 IBLA at 295, the Coburn opinion observes: "As appellant states, the signature by T. S. Wied, as it appears on the application, is a nullity on its face. It is dated on August 26, 1981, prior to the opening of the simultaneous filing period. It is therefore wholly to be disregarded." The assumption implicit in this statement is that the date is an essential part of the oil and gas application, which, if omitted or improperly written, will automatically invalidate the entire application. See 43 CFR 3112.1-2. Since publication of the decision in Conway v. Watt, supra, however, this Board has been obliged to reconsider that position. It is now clearly the rule that an application ought not to be automatically rejected because of an imperfection in the date. See Amberex Corp., 78 IBLA 152 (1983). In this case, therefore, it was incorrect to assume that the signature of Westates' partner T. S. Wied was "wholly to be disregarded" since disqualification of an application by misdating is not automatic.

Were these two objections concerning signing the only matters urged by appellant, the previous decision of the Board would be subject to reversal

without further discussion. On appeal, however, Coburn urged numerous errors, three of which were not discussed in the first Board opinion dealing with this matter. The issues initially before the Board were stated in Coburn, supra, at pages 294 and 295 as follows:

> First, appellant contends the disclosure that "R. Skubic" is interested in 50 percent of the lease offer is a statement that R. Skubic owns an interest over and above the interest of the two partners as shown by the qualifications file. Since that interest is undisclosed, appellant argues that the provisions of 43 CFR 3102.2-7 (1981) prohibiting such interests is violated by the application. Second, appellant argues that because the application shows it was signed by T. S. Wied prior to the September 1981 simultaneous filing period, the lease application should have been rejected as premature, and also should be rejected because the signature of the agent appearing on the application is illegible, and the relationship between the applicant and its agent cannot be ascertained, pursuant to 43 CFR 3112.2-1(b) and (c), citing Charles Y. Neff, 64 IBLA 234, 237 (1982), and Leonard Thompson, 62 IBLA 236 (1982). Third, it is contended that the Westates Group #5 application violates 43 CFR 3112.2-1(d) because it does not clearly contain the applicant's personal or business address as required by the regulation. Finally, appellant urges that the Westate Group #5 application is defective because the qualifications statement shown on the application form fails to contain a current disclosure of partnership qualifications timely filed within the requirements of 43 CFR 3102.2-1(c), citing Cluff Oil, Inc., 64 IBLA 156 (1982).

Having granted reconsideration of our prior decision and found that the result thereof was premised on error, it now behooves us to examine the entire matter de novo.

The applicant named on the face of the application form is "Westates Group #5." On the reverse side, in the space provided for "Applicants Signature," appears the signature "T S Wied." But Weid is not the applicant, the partnership is the applicant. The signature closely resembles the signature of Thomas S. Wied written on other documents in the file which Wied was supposed to sign personally. It thus appears that Weid himself signed as "Applicant" on the back of the card. The Statement of Partnership Qualifications contained in the record recites that either Wied or Skubic is authorized to act on behalf of the partnership; it declares that each of them is a general partner, and general partners are, by inference of law, empowered to so act. If Wied personally signed the application, therefore, why did Young sign as agent for Wied? Why didn't Wied sign for the partnership? Or, did he? On the other hand, if Young signed Wied's name and then his own as agent for Wied, what was the purpose in that? The partnership was the applicant, not Wied.

There is a space on the back of the card where the names of "Other Parties In Interest" are to be entered. The text above this space explains

that a "yes" answer to questions (d) or (e) indicates the existence of another party in interest. Although questions (d) and (e) are marked "No," the name "R. Skubic 50%" is entered in the space.

By the entry of Wied's signature as "applicant" and the showing that Skubic held a 50% interest in the lease which would be issued to Westates Group #5, the application became hopelessly ambiguous. It presented the clear possibility that the partnership would be issued a lease in which it would hold a 50% interest, with the remaining 50% to be held by Skubic individually. Indeed, that is the most reasonable interpretation, because if that were actually the intention of the parties, Skubic's name should have been entered as it was. But if the lease were to be issued to the partnership which would hold 100%, no entry should have been made in the space provided for "other parties in interest." There is no prohibition against a member of a partnership owning an individual share of a asset with the remainder held as partnership property, and that is the intent indicated on the card. If the parties thought it necessary to enter Skubic's name in order to show the extent of his interest in the partnership, why wasn't Wied's name entered there as well? Had there been ten partners, would all their names and respective interests have been listed? Or would all have been listed except Wied? One purpose of requiring a separate statement of partnership qualifications was to obviate the need for identifying the individual partners and their respective interests on the offers and applications filed in the partnership name.

So what we have is an application which lists four separate entities, each appearing in a different capacity: Westates Group #5 being the applicant, Skubic being listed as another party in interest, T. S. Wied's signature appearing as the "applicant's signature," and Young's signature as the applicant's agent (without indication that he was acting in his capacity as president of the corporate agent, Westates Resources, Inc.).

Correctly done, the application would have had only two names; i.e., the name of the partnership and the signature of the individual who executed the application on behalf of the partnership, with an indication of his relationship to the partnership.

Appellant has raised the issue of the legitimacy of the address of record listed for the partnership on the application card, i.e., P.O. Box 1904, Ontario, California 91762. This is a common address apparently used by all of the "Westates Group" partnerships for which Westates Resources, Inc., a filing service, is agent. Westates Resources, Inc.'s address is P.O. Box 1479, Ontario, Calif. 91762. Of the two partners who comprise Westates Group #5, Skubic's address is in Claremont, California, and Wied's address is in Azusa, California. While those towns are relatively close to Ontario, the use of the same post office box in Ontario as the common address of record for many, if not all, of the Westates Group Partnerships evinces a transparent attempt to subvert 43 CFR 3112.2-1(d), which states: "The application shall include the applicant's personal or business address. * * * The applicant shall not use the address of any other person or entity which is in the business of providing assistance to those participating in the simultaneous oil and gas leasing system. " [Emphasis added.]

The purpose of that regulation was explained by the Department in the Federal Register at the time it was proposed, as follows:

> Filing Service Abuses
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> Within the framework of present regulations, most applicants employ agents, commonly known as filing services, which promise to provide assistance in participating in the simultaneous oil and gas leasing system.
>
> Most filing services file their client's drawing entry cards directly with the Bureau of Land Management and use the service's address on the cards instead of the applicant's personal address. Typically, filing services rubberstamp the client's signature on the card or have the client send the cards to the filing service pre-signed.
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> The drawing entry card is the applicant's offer to lease. Leases are issued in the name of the drawing winner upon submittal of the first year's rental within 15 days after notification. The applicant is not required to sign the lease form.
>
> The existing system has been abused by some filing services. Lease offers have been filed in the names of deceased persons. Drawing winners have been victimized by filing services which fail to pass on drawing results. Some services have advanced the first year's rental and obtained leases which have then been assigned without their client's knowledge. In these cases, it is believed, the assignment is often in accordance with a pre-existing contract between the filing service and an oil company or middleman.
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> The following proposed regulatory changes address these abuses:
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> * * * * * * *
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> (3) The return address used on the drawing entry card would be required to be the applicant's personal or business address. A filing service's address could not be used.

44 FR 56176 (Sept. 28, 1979). The publication noted that this Board had deplored "the proclivity of some leasing services to exploit every conceivable loophole in the letter of the regulations without any discernible regard for their spirit and intent," citing W. H. Gilmore, 41 IBLA 25 (1979). In the Gilmore decision we also stated:

> We have frequently held that where a BLM State Office is not satisfied as to compliance with the regulations, it should require the offeror to provide such information in support of his offer as will resolve the questions. Ray H. Thames, 31 IBLA 167 (1977); Charlotte Thornton, 31 IBLA 3 (1977); D. E. Pack, 30 IBLA

166, 84 I.D. 192 (1977); Mary E. Niland, 28 IBLA 300 (1977); Arthur S. Watkins, 28 IBLA 79 (1976); William J. Sparks, 27 IBLA 330 (1976); Robert C. Leary, supra. Under these cases BLM may demand of the offeror whatever relevant information it requires.

Moreover, where an oil and gas offeror fails or refuses to respond within a prescribed time to an order directing him to submit specific information necessary to determine whether his offer is valid, it is appropriate to reject the offer. Lee S. Bielski, 39 IBLA 211, 86 I.D. 80 (1979); Ricky L. Gifford, 34 IBLA 160 (1978). If the lease had already issued, it may be canceled upon the lessee's failure to submit additional information which BLM properly required. Robert A. Chenoweth, 38 IBLA 285 (1978).

While the evidence before us is inadequate to find as a matter of fact that the use of one Ontario post office box for the corporate filing service and another such box as the address of record for many, if not all, of its clientele is a mere subterfuge to circumvent the regulation, appellant has certainly supplied sufficient information to arouse grave suspicion that that well may be so. In Lee S. Bielski, supra, we held that where a protestant against the issuance of an oil and gas lease supports his contentions of irregularity with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed, but adjudicated on its merits after all available evidence has been developed. 39 IBLA at 222; 86 I.D. at 86.

Even were we to hold that Westates Group #5's application was otherwise qualified, we would require that the following information be developed concerning Post Office Box 1904, Ontario, California:

1. In what name is (or was) the box held?

2. How did it occur that the Westates Group #5 partnership and the other Westates Group partnerships utilized this box as their business address?

3. Who held the box prior to the formation of Westates Group #5?

4. Does anyone from Westates Resources, Inc., have access to the box?

5. Does at least one general partner of each of Westates Group partnerships utilizing the box have individual access to the box and the mail delivered there? If so, how?

6. Who ordinarily collects the mail from the box?

7. Who opens the mail delivered to the box, and what is done with it?

8. How is the box rental paid, and who pays it?

9. What is the proximity of Box 1904 to Box 1479, held by the filing service?

10. Does an examination of the lease rental records of the two boxes reveal any relationship?

11. Why did not either Skubic or Wied use one of their own addresses as the address of record?

Less egregious errors than appear here have been cause for rejection in other cases. See Charles Goodrich, 60 IBLA 25 (1981); aff'd, Goodrich v. Watt, Civ. No. 82-0405 (D.D.C., Aug. 13, 1982). The Board's decision in that case quoted our earlier decision in Vincent M. D'Amico, 55 IBLA 116, 122 (1981), as follows:

> If a person chooses to use a corporate filing service to act as his agent in preparing and filing an application for an oil and gas lease, that corporate agent must use the signature box marked "Agent's Signature" on form 3112-1 (June 1980). It is not enough, however, that the corporate name be handwritten in this box. There must also appear the holographic signature of the person authorized to sign on behalf of the corporate filing service. Ordinarily, such a corporate signature might take the form "John Brown, Vice President, Acme, Inc." See Anchors and Holes, Inc., 33 IBLA 339 (1978). The additional requirements of 43 CFR 3112.2-1, requiring an application to be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, suggest the following as an appropriate signature of a corporate filing service on behalf of Robert Jones, applicant: "John Brown, Vice President, Acme, Inc., agent for Robert Jones." [Emphasis in original.]

Vincent M. D'Amico, supra at 123. In this instance the officer of the corporate agent merely scrawled his name.

The simultaneous filing procedure under which appellant's and respondent's application cards were filed was often referred to as "the lottery." However, it must be recognized that it was not a lottery in the classic sense that the entrant whose ticket was drawn first became automatically entitled to the grand prize as a matter of right. All the oil and gas applicant "won" by being first drawn was a priority to have his application considered first to determine whether or not it was acceptable as a "qualified" application. Once it was determined that the first-drawn application was deficient in some respect, the priority enured eo instanti to the second-drawn application. For that reason this Board held for many years that a first-drawn entry card which is defective because of non-compliance with a mandatory regulation may not be "cured" by the submission of further information. See, e.g., Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974); aff'd, B.E.S.T, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). Recent court decisions have held that rejection will not lie for errors which are "trivial" or "non-substantive." See Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), (date omitted from the card); Brick v. Andrus, 628 F.2d 213 (D.C. Cir. 1980), (name entered on card

in reverse order); ANR Production Co. v. Watt, Civ. No. 83-375K (D. Wyo., Jan. 11, 1984), (relationship of signator to applicant not shown).

However, in this case, appellant's card is so replete with error, both "trivial" and substantive as to indicate a total disregard for the regulations. Virtually nothing was done correctly.

First, on the face of the card the name of the applicant is listed as "Westates Group #5," whereas the Statement of Partnership Interest in the qualifications file shows the name of the partnership to be "Westates Group V." Viewed in isolation, the Board would regard this as trivial error.

Second, the address used indicates a possible violation of 43 CFR 3112.2-1(d), as discussed above. If confirmed, the Board would regard this as a substantive violation which is automatically disqualifying.

Third, as noted above, the entry "R. Skubic 50%" was entered in the box provided to show the "other parties in interest," but no separate statement of his qualifications was filed despite the fact that the instructions printed above that box clearly state, "All such interested parties must furnish evidence of their qualifications within 15 days of the filing of this application. See 43 CFR 3102.2-7." Now appellant "explains" that Skubic is not another party in interest. The Board regards this as substantive error, warranting rejection.

Fourth, the signature of Wied in the space reserved for the "Applicant's signature" is misplaced, Wied not being the applicant. The Board regards this as an error of some substance.

Fifth, Wied's signature is dated prior to the filing period, in violation of 43 CFR 3112.1-2. As noted above, the Court of Appeals held in Conway v. Watt, supra, that this is non-substantive error.

Sixth, both Wied and Young failed to follow the example provided by 43 CFR 3112.2-1(b) "to reveal the name of the applicant, the name of the signatory and their relationship (Example: Smith, agent for Jones; or Jones, principal by smith, agent.)." As noted above, the District Court held in ANR Production Co. v. Watt, supra, that this is non-substantive error.

Seventh, the name of the true agent, Westates Resources, Inc., appears nowhere on the card. The Board regards this as substantial error.

Eighth, Young's signature is an undecipherable scrawl, not identifiable without reference to extraneous materials by comparison with other signatures in the file. See R. C. Bailey, 7 IBLA 266 (1972); aff'd sub nom Burglin v. Morton, 527 F.2d 486 (9th Cir. 1976).

Ninth, Young appears on the card to be acting as the agent for Wied as applicant, whereas in fact it is Westates Resources, Inc. which is agent for Westates Group V (or "Westates Group #5," as it appears on the card). The Board considers this to be substantial error.

Admittedly, the several courts, by considering certain of these kinds of errors one at a time, in isolated cases, have held that the single error by the applicant in those cases was "trivial" and/or "non-substantive," and by that process have eroded the applicability of the Department's former rigid, unwavering practice of rejecting a simultaneous drawing entry card for any such error and proceeding immediately to the next-drawn applicant. This Board has also contributed to this erosion by trying to adhere to the courts' rulings when adjudicating appeals involving single errors on a case-by-case basis. See, e.g., Hercules (A Partnership), 67 IBLA 151 (1982); Blanche Chomicki, 51 IBLA 128 (1980).

However, it was never intended that the cumulative effect of this "piecemeal" adjudication of various individual errors, considered one by one, would be to render it impossible to reject an application such as this one, which incorporates nearly all of them. If each of the discrepancies cataloged above can be considered in isolation and either disregarded as trivial or non-substantive or "explained" by post-hoc submissions, then, absent evidence of fraud, BLM must accept virtually any application that is drawn first, regardless of how many errors appear or how many of the governing regulations have been violated. Such a result would contravene public policy, because, as noted by the Court of Appeals in B.E.S.T., Inc. v. Morton, supra, it would "infringe on the rights of the second-drawn qualified offer." 544 F.2d at 1070.

The case of Blanche Chomicki, supra, relied on by the dissenter, presented a different factual milieu. There the applicant did not enter any names of "other parties in interest" because in fact there were none. Here, the application indicated that Skubic would hold a separate 50% interest in the lease awarded to the partnership as "another party in interest," and now the partners and their agent come forward to deny the truth of what the card (which they prepared) reflected. Nevertheless, the Chomicki case does represent an instance in which this Board departed from its regular practice and the rule in B.E.S.T., Inc. v. Morton, supra, and allowed the first-drawn applicant to explain away what appeared to be a discrepancy on her drawing entry card. It appears that the Chomicki decision may have been based upon equitable considerations, appellant being a grandmother, obviously unknowledgeable concerning Federal leasing procedures, who only wished to indicate her future intent to share her "good fortune" with her minor grandsons, and who, in fact, had violated no regulation, but merely created an ambiguity by the entry of the words "ET AL." after her name on the face of the card while declaring herself to be the "sole party in interest" on the back of the card. Even so, BLM was justified in disqualifying the Chomicki application because of that ambiguity, because otherwise it would either have had to issue the lease in the name of "Blanche Chomicki, et al." regardless of her statement that she was the sole party in interest and the absence of any name of another party, or else engage her in correspondence in order to afford her the opportunity to "cure" the ambiguity at the expense of the rights of the next-drawn qualified applicant.

To the extent that Chomicki stands for the proposition that defective simultaneous lease applications may be "cured" by the further submission of information after the drawing, in contravention of the rule in B.E.S.T., Inc. v. Morton, supra, it must be overruled.

The Chomicki decision certainly should not be applied to salvage an application as badly botched as the one before us now.

The fact that BLM issued the subject lease to Westates Group #5 in the apparent belief that it understood what the application intended does not influence our result. Cf. ANR Production Co. v. Watt, supra. It is the function of this Board to determine whether BLM acted in accordance with the applicable law, regulations and Departmental policies operative at the time, and the fact that BLM happened to favor the Westates Group #5 application is of no consequence in deciding whether it acted correctly in doing so. We find that the information on the card was so ambiguous that BLM could not have issued the lease as it did without indulging in conjecture and making certain unwarranted assumptions.

Moreover, the application was clearly violative of several of the regulations regarding the execution of such cards, as discussed above, and apparently violative of the regulation governing the use of addresses other than the applicant's own. Finally, the form was not completed in accordance with the instructions printed thereon.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, our decision styled Maurice W. Coburn, 75 IBLA 293 (1983), is modified accordingly, but sustained in its result. The BLM decision stands reversed, and the case remanded to BLM with instructions to cancel oil and gas lease W-77601 and to issue a lease to Maurice W. Coburn if all else be found regular.

Edward W. Stuebing
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge.

ADMINISTRATIVE JUDGE ARNESS DISSENTING:

The majority opinion expands appellant's contentions alleging error in Westates' application to nine perceived faults. Included in that number, the four principal defects complained of by Coburn have, however, been excused at one time or another in prior cases to permit lease either by this Board or by the Federal courts. Errors concerning signing and dating the application, which previously formed the basis for the initial decision of this appeal, are now resolved by subsequent supplementation to complete the record on appeal (the signature question) and recognition of the relevance of the Conway decision to this case (the date problem). Of the list of errors remaining, only one, the entry "R. Skubic 50%" in the "other party in interest" blank on the application, is considered substantial enough, alone, to merit rejection of the Westates' application. The remaining six defects, however, taken in the aggregate are considered by the majority to accumulate sufficient weight so as to also be disqualifying.

The question relating to disclosure of other parties in interest, first raised by appellant Coburn, and discussed at length by the majority opinion, involves a technical and strict application of Departmental regulations codified at 43 CFR 3102.2-7 (198). Thus, appellant asserts in his statement of reasons at pages 2 to 3:

> The partnership qualifications statement for Westates Group #5 discloses that the partnership is equally owned by Thomas S. Wied and Robert J. Skubic. It may well be that, because the application for Lease W-77601 was signed by T. S. Wied, one of the partners, that he thought it was necessary to disclose the other owner of a 50% interest in the partnership. Nevertheless, the cause for the error does not excuse it and the application should have been rejected because, although another party in interest was disclosed on the application, no statement of interest as required by 43 C.F.R. § 3102.2-7 was submitted. The application, on its face, indicates that the partnership, Westates Group #5, will have a 50% interest in the lease and R. Skubic, individually, will have a 50% interest. Compliance with 43 C.F.R. § 3102.2-7 is mandatory and the application should have been rejected. [Footnote omitted.]

Significantly, no claim is made that either partner actually violated any rule requiring disclosure of interest by possession of an undisclosed interest. The allegation made is merely that there was a facial violation of a regulation by an entry which suggested the possibility of noncompliance.

In Blanche Chomicki, 51 IBLA 128 (1980), the Board considered a similar case where the applicant had added the expression "et al." following her name on the application. She explained, following rejection of her entry card, that the words which apparently indicated a present interest in the offer by others was nothing of the sort. Like the partnership in Westates, Chomicki established, on appeal, that there was in fact no other party in interest. Accepting her explanation of the transaction, despite the apparent ambiguity

which appeared on the face of her entry card, the Board observed at 51 IBLA page 130:

> The explanation provided by appellant to this Board on appeal indicates that she is the only party with any interest, as defined by the above regulation, in the offer at issue. The reference to "ET. AL." though unnecessary does not violate the regulations since the DEC is otherwise fully executed under the circumstances. Appellant indicates that she was referring to her two grandsons to whom she wants to transfer an interest in the lease when they reach legal age. The grandsons were minors at the time the DEC was executed and therefore ineligible to presently file an offer or hold a lease. 43 CFR 3102.1-1(b). It is clear that the grandsons would have no present interest in any lease won by their grandmother. Additionally, there is no evidence that appellant is trustee or guardian of her grandsons or that any agreement or understanding giving rise to a claim to future benefit from such a lease exists. Thus we conclude that the grandsons hold no interest as defined in 43 CFR 3100.0-5(b) and appellant did not violate 43 CFR 3102.7. Appellant's explanation indicates that although she had a present intention to transfer some of her rights in a lease to her grandsons in the future, no such transfer had been formally or informally agreed to. If the grandsons were even aware of the lease offer, they had at most a hope or expectation in sharing in the benefit from their grandmother's lease sometime in the future. [Citations omitted.]

It is therefore apparent that, in a case where the effect of an entry upon a lease application is ambiguous or inconsistent, it may be explained. If the explanation establishes that there is, in fact, no undisclosed party who has an interest in the offer it will be approved. Especially is this true since the decision in Conway, which clearly intends to discourage generally the strictly literal application of rules governing acceptance and rejection of oil and gas leases. The opinion in Conway clearly disapproves an unvaryingly strict approach to the construction of Departmental oil and gas leasing regulations, when it observes that other decisions of the Federal courts, notably Aherns v.Andrus, 690 F.2d 805 (10th Cir. 1982), Winkler v. Andrus, 594 F.2d 775 (10th Cir. 1979), and Lowey v. Watt, 684 F.2d 957 (D.C. Cir. 1982), have previously given indication that "non-substantive error" no longer may be used as a basis for rejecting first-drawn oil and gas lease applications. See Conway, supra at 514-16. There must be more than the mere appearance of violation of rules, therefore: there must be an actual "substantial" error or violation of rules prohibiting certain types of conduct which actually violates statutory or regulatory policy.

Whatever ambiguity can be found in the insertion of the entry "R. Skubic 50%" in the blank of the Westates' application form provided for listing of other parties in interest is clearly explained within the context of Chomicki. Since Skubic did not sign, but appears in the agency records as an equal partner in Westates, the entry is either redundant of a known fact or else, as appellant indicates, a possible violation of the Departmental disclosure requirement concerning other parties in interest. Since the record on appeal now establishes that Skubic, in fact, holds only his previously declared

partnership interest, it is apparent there was no actual violation of Departmental rules requiring disclosure.

It should be observed that this circumstance was not so confusing as to prevent lease issuance to Westates by BLM in the first instance. In ANR Production Co. v. Watt, No. C83-375-K (D. Wyo. filed Jan. 11, 1984), the court, following Conway, observed that the ability of the agency to deal with an application should be considered in determining whether an anomaly in an application is disqualifying. Pertinently, the court observed at pages 3 and 4:

> There is no doubt that plaintiff did not include the relationship of the signatory, Bennett, to the plaintiff, ANR. Nor did plaintiff note a file number on the card to assist the BLM in making that determination for itself. However, apparently BLM did not require such information as it was able to understand and use the application as submitted, and in fact defended the application of plaintiff when it was first subjected to protest. As the BLM noted in its original decision, someone had to sign the application on behalf of plaintiff, since plaintiff is a company and cannot act except through its officers and employees. The qualification file which plaintiff had previously registered with the BLM presumably provided the information regarding those officers and employees.
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> As noted in the Conway case (supra), the BLM is given broad discretion in checking compliance with the qualification requirements. See 43 CFR § 3102.3. This Court will not remove that discretion under the pretense of strict compliance with the regulations. Those regulations are to assist the BLM, not to constrict it.

Whatever ambiguity was created by the "R. Skubic 50%" entry has been dispelled on appeal. This circumstance is not a sufficient justification for rejection of the Westates' application.

The majority also considers the address used by Westates to be defective. While they stop short of a finding that the Westates' application should be rejected under provision of 43 CFR 3112.2-1(d) for failure to provide an acceptable address distinct from that of their filing service, they discuss cases upholding BLM's authority to require further information in this area, and suggest that the address indicates a violation of regulation did, in fact, occur. This perceived defect is a substantial factor in the accumulation of error described. The address of the partnership is, however, clearly shown on the application. The BLM qualifications file, furnished on request of the Board, reveals the addresses, as well, of the individual partners and the corporate agent. Contrary to speculation by the majority opinion, there is nothing in any of this material to suggest that the addresses are not proper. Were there some deficiency in the form of the address used by Westates, it is not revealed by the record on appeal, nor is it described by appellant in his claim of error. Use of a business address by a partnership is specifically

permitted by the regulation. The usage in this case conforms to the regulatory requirement. If there is any question concerning the address, the matter is, of course, properly referred to BLM for necessary fact-finding to determine the true state of facts. In this case, however, BLM had no question concerning the form of address used by Westates, and issued the lease. Absent some showing beyond mere speculation, the action by the agency should not be disturbed. See, in this connection, ANR Production Co. v. Watt, supra.

The remaining errors enumerated by the majority are characterized as trival or nonsubstantive (use of roman instead of arabic numeral in partnership name, incorrect date entry, signature anomaly) or as "of some substance" (the manner of signing by Young, omission of the corporate title). The thrust of this characterization is to facilitate a finding that the cumulative effect of these enumerated factors, acting in concert with all the other perceived defects, whether trivial or not, is to invalidate the application. This conclusion is not explained, nor is it logical. If the cumulative effect of the anomalies perceived were truly confusing or suggestive of violation of Departmental regulation, it would not now be possible to determine the identity of the Westates' applicants or their relationship to one another. This is manifestly not the case. The fact that BLM did, in fact, identify the partnership and issue a lease to it indicates there was no practical difficulty in deciphering the application. While this circumstance is not an excuse for actual violation of regulation by an applicant, it is a consideration where a first-drawn applicant is about to be rejected because of "cumulative" defects, no one of which, alone, constitutes a defect of substance so as to justify rejection. The only reason for a conclusion such as found by the majority opinion, is that the numerous errors so obscured the application it was not possible to identify the applicant or determine its qualification to receive a lease. The record as supplemented does not support this funding. The record now before the Board, which now includes the BLM qualifications file, was the record before BLM: it was on the basis of this record that a lease issued to Westates, which was identified as a qualified applicant from the information contained on the application and in the qualifications file.

The difficulty with the approach taken by the majority opinion, besides its lack of specificity, is that it ignores the holding in Conway, recently followed by this Board in Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984) (reaff'd on reconsideration, June 28, 1984), to the effect that "nonsubstantive" errors are not a sufficient basis for finding an application defective. Under Conway, de minimis error is not grounds for loss of substantial rights. That Tenth Circuit decision, followed by this Board, has now established that the test whether a lease should or should not issue is whether there is an indication in the record that the applicant is not qualified to hold a lease. There is, in this record, nothing to show that Westates is not so qualified. Upon the record as constituted the lease was properly issued to Westates. The BLM decision to issue the lease should therefore be affirmed, and this Board's prior decision in Maurice W. Coburn, 75 IBLA 293 (1983), should be reversed.

Franklin D. Arness
Administrative Judge.